

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MICHAEL GERHARDT,

Plaintiff,

v.

OFFICER CARDEN #14, OFFICER  
ROBINSON #20, OFFICER RODMAN #16,  
and the VILLAGE OF FLOSSMOOR,

Defendants.

JUDGE ANDERSON  
MAGISTRATE JUDGE COX  
No. 08-c-2619

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**JOINT STATUS REPORT**

NOW COMES the Plaintiff, by and through his attorney, Erica Faaborg of Horwitz, Richardson, and Baker, LLC, and the Defendants, by and through their attorney, Mark Smolens of Ryan, Smolens & Jones, and submit this joint status report.

1. The lead attorneys on the case are Blake Horwitz for the Plaintiff and Mark Smolens for the Defendants. These are the attorneys that will try the case if it goes to trial.

2. Basis for federal jurisdiction: 42 U.S.C. § 1983; 28 U.S.C. §1331 and §1343(a); the Constitution of the United States; and this Court's supplementary jurisdiction powers.

3. Nature of the claims asserted in the complaint and any counterclaims: The Plaintiff alleges he was falsely arrested and brings claims of § 1983 false arrest and conspiracy, along with state claims of false arrest and conspiracy, a federal claim for excessive force, battery (state law claim), an indemnity claim against Village of Flossmoor under 745 ILCS 10/9-102, and a supplementary *respondeat superior* claim.

4. The name of any party not yet served and the circumstances regarding non-service: All defendants, other than Officer Rodman, have been served and have appeared through counsel.

Plaintiff understands that Officer Rodman is no longer employed with the defendant municipality and may be residing out of the country. Plaintiff hopes to determine, after some initial discovery, if Officer Rodman is a necessary party to this action, and, if he is not, will seek leave to dismiss him as a defendant.

5. Principal legal issues: the probable cause standard for a false arrest claim, the standards regarding amount of force to be used to effectuate an arrest, the elements of battery and conspiracy.

6. Principal factual issues: whether the Defendants had any basis to arrest and use force against the Plaintiff, i.e. the Defendants' factual basis for probable cause and the Plaintiff's claimed lack thereof.

7. Whether a jury trial is expected by either party: Plaintiff has demanded a trial by jury.

8. A short description of any discovery undertaken to date and any anticipated in the future: no discovery has occurred to date. The parties expect to use the normal discovery devices, including requests for production, interrogatories, requests for admission, and depositions. At this juncture, the parties do not anticipate exceeding the ten (10) depositions allotted by the Federal Rules of Procedure and do not anticipate needing more than the seven (7) hours allotted for each such deposition. The parties propose the following discovery schedule:

- a. Fact discovery to be completed by January 15, 2009.
- b. Plaintiff to disclose expert witnesses by February 15, 2009.
- c. Defendant to disclose expert witnesses by March 15, 2009.

9. The earliest date the parties will be ready for trial and the length of the trial: The parties believe they can be ready for trial in approximately seven months (April 20, 2009) and anticipate the trial lasting 2-3 days.

10. Whether or not the parties unanimously consent to proceed before a Magistrate Judge: the parties do not unanimously consent to proceed before a Magistrate Judge at this time.

11. The status of any settlement discussions and whether the parties request a settlement conference: Plaintiffs have not made a demand, and to date, no settlement discussions have occurred. At this juncture the parties are not requesting a settlement conference.

Respectfully submitted,

s/ Erica Faaborg

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